



ROBERT W. SPEARMAN
CHAIRMAN

STATE BOARD OF ELECTIONS
SUITE 801 RALEIGH BUILDING
5 WEST HARGETT STREET
RALEIGH, NORTH CAROLINA 27601

February 10, 1982

MEMBERS
MRS. ELLOREE M. ERWIN
CHARLOTTE
WILLIAM A. MARSH, JR.
DURHAM
MRS. RUTH TURNER SEMASHKO
HORSE SHOE
ROBERT W. SPEARMAN
RALEIGH
JOHN A. WALKER
NORTH WILKESBORO

SUBJECT: RESIDENCY FOR VOTING
FROM : ROBERT W. SPEARMAN, CHAIRMAN *RWS*
ALEX K. BROCK, DIRECTOR *AKB*
JAMES M. WALLACE, COUNSEL *JMW*
TO : COUNTY ELECTIONS BOARDS AND SUPERVISORS

Some elections boards and various civic groups have asked for guidance in determining the residency of persons seeking to register to vote.

Under State law, persons are entitled to register to vote where they are domiciled. Thus, the issue is determining where a person is domiciled. A person is domiciled in a county if he lives there and intends to remain for an indefinite time. This issue has arisen most frequently with respect to resort areas and in towns where colleges are located. In such circumstances, persons seeking to register to vote often have connections both in the county where they are seeking to register and also in some other county where they at some time in the past have resided.

This memorandum is intended to give guidance to local boards on residency questions so that a uniform, fair approach is followed by boards throughout the State.

The following points should be adhered to by local boards.

1. Each applicant's eligibility to register to vote in a county must be determined individually. Usually, of course, there is no serious question about residency.
2. A person is a resident of the county where he seeks to register if he has given up his previous home and intends to make the county in which he is applying his home. In the case of a student, the fact that he intends to stay in the college town only for his education and expects to leave when some future event occurs such as graduation and marriage or employment, does not keep him from being considered a resident of the county or town for the present. The fact that a person's address is within a student neighborhood, a dormitory or an area primarily composed of vacation homes does not mean he is ineligible to register in the county.
3. It is not required that any special residency questionnaire be administered to persons seeking to register to vote. However, if a

local board chooses to have questions asked to determine residency, the following are the ones we suggest using:

- (a) Are you already registered to vote;
- (b) Where?
- (c) What address is on your driver's license?
- (d) What address is listed on your car registration?
- (e) Where do you pay property tax?
- (f) Where do you have your checking account?
- (g) Do you intend to return to your prior home to live after you graduate?
- (h) Do you intend to return to your prior home to live after the summer is over?

The answer to any one of these questions alone does not, by itself, determine residency; however, if the answers to all or most of them shows that the person regards the county where he is applying as his home, ordinarily he should be permitted to register there.

4. Persons found not to be residents of the county in which they seek to register should be encouraged to register and vote at their prior home. When persons who were previously registered elsewhere register to vote in a new county, they should be requested to sign an authorization to cancel prior registration pursuant to G. S. 163-72.1.



STATE BOARD OF ELECTIONS

133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601

GARY O. BARTLETT
Executive Secretary-Director

Mailing Address:
P.O. BOX 2169
RALEIGH, NC 27602
(919) 733-7173
FAX (919) 715-0135

September 20, 1995

Luther Packer, Sr., Chairman
Cumberland County Board of Elections
Room 18--Courthouse
Fayetteville, North Carolina 28301

Dear Chairman Packer:

This letter is a response to your verbal request for an opinion regarding residency as it pertains to voter registration. Although the voter registration laws have undergone dramatic changes in the past year, the statutory definitions and requirements regarding residency for purposes of registering and voting have not changed.

Article VI, Section 2 of the North Carolina Constitution, and Section 163-55 of the North Carolina General Statutes provide for the qualifications to register and vote in the State. According to those citations, a person is eligible to register and vote in North Carolina if: (1) he was born in the United States or is a naturalized citizen of the United States, (2) he is 18 years of age or will be 18 years of age by the date of the next general election, (3) he has resided in the State of North Carolina and the precinct in which he is registering for 30 days prior to the date of the next election, and (4) he has not been convicted of a felony, or has had citizenship rights restored following a felony conviction.

Section 163-57 of the North Carolina General Statutes further defines "residency" for voter registration. There are four subsections that are particularly relevant to questions posed regarding residency of elected Congressional Representatives:

- §163-57(1) states "That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning."
- §163-57(2) states "A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this State, for temporary purposes only, with the intention of returning."
- §163-57(8) states "If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resided at the time of his removal shall be considered and held to be his place of residence."
- §163-57(10) states "For the purpose of voting a spouse shall be eligible to establish a separate domicile."

Packer
September 20, 1995
Page Two

Past Attorney General advisory opinions agree that the intent of the voter is controlling, unless a formal challenge is made, and satisfactory evidence to the contrary produced. It is clear that the North Carolina Statute is written in such a way as to allow elected Congressional Representatives to remove themselves to the District of Columbia, during their term of office, without fear of losing their residency status. In addition, it should be noted that property ownership is neither a requirement nor a qualification to register to vote in this State. For example, the 100 counties currently accept voter registration applications from homeless individuals, if the applicants can provide an address where they spend most of their time and an address where they can receive mail.

It is the opinion the undersigned officer that an elected Representative may, of course, be subject to a residency challenge; however, during his term of office, he may live in the District of Columbia or its surrounding area and remain a resident of North Carolina for voting purposes, provided he does not register or vote in another jurisdiction. Should you have any questions regarding this information, please contact my office.

Sincerely yours,



Gary O. Bartlett
Executive Secretary-Director

I concur,



Charles M. Hensey
Special Deputy Attorney General
Elections Section

GB:shf



STATE BOARD OF ELECTIONS

133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601

GARY O. BARTLETT
Executive Secretary-Director

General Advisory Opinion

Mailing Address:
P.O. BOX 2169
RALEIGH, NC 27602
(919) 733-7173
FAX (919) 715-0135

Without specific conditions upon which to base a response concerning questions of residency, the subject will be addressed in generic terms. Generally, in order to be eligible for election to office, a person must be eligible to vote for the office.

To be a registered voter one must have residence in a jurisdiction for 30 days by the date of the election (there are constitutional requirements in addition to the 30 days for some offices). Past opinions from the Attorney General's office, the Courts and this Agency have stated that "legal residence" is determined by the expression of a person's intent. If challenged by any other registered voter in the county the burden of proof is on the challenger, but the challenged voter must be able to show that his residence is his domicile.

Voting is determined by a person's domicile which is that place the voter calls home and intends to return whenever absent. This is compared to a "residence" which is where the person currently is living. A great distance and period of time could separate a person from his domicile.

Upon a proper challenge, the intent of the voter would be subject to examination by the county board of elections and the courts. If a voter has continuously maintained his voter registration in one locality he is probably qualified to vote and seek public office. However, if that "chain of residency" has been broken, meaning the establishment of a domicile in another jurisdiction, then the intent of the voter could be suspect.

Should a voter's residency be challenged and a hearing conducted, some of the questions which could be considered are:

1. Are you already registered to vote; if so, where?
2. What address is on your drivers license?
3. What address is listed on your car registration?
4. Where do you pay property tax?
5. Where do you have your banking accounts?
6. Do you intend to return to your prior home to live after your temporary absence?

Any one of these questions alone does not, by itself, determine residency; however, if answers to all or most of them shows that the person regards the county where he is applying as his home, ordinarily he should be allowed to register there.

By way of example, rather than fact, if a voter grew up in City A, registered to vote in the county where the city is located, and voted there regularly, he could easily claim City A as his home. However, if, at age 25, he moved to City B, established a home, worked in that city, registered to vote in the county where City B is located, and regularly voted in City B, should he decide at age 40 to return to City A, register to vote and file a notice of candidacy for the coming election, it could be difficult for him to *convincingly show* that his intent had been to maintain residence and return to City A.

These matters would be for a "fact finder" to determine. According to the General Statutes the responsibility to judicially determine residency from the available evidence is placed with the county boards of elections and the superior court of the appropriate county.

This is an opinion of the undersigned officer, and has not been submitted to the State Board of Elections.


Gary O. Bartlett
Executive Secretary-Director